

**CITY OF MATTOON, ILLINOIS**  
**CITY COUNCIL SPECIAL MEETING AGENDA**  
**August 11, 2008**

**8:00 AM Business Meeting**

**Pledge of Allegiance**

**Roll Call**

**Electronic Attendance**

**PRESENTATIONS, PETITIONS AND COMMUNICATIONS**

*This portion of the City Council meeting is reserved for persons who desire to address the Council. The Illinois Open Meetings Act mandates that the City Council may NOT take action on comments received on matters that have not been identified on this agenda, but the Council may direct staff to address the topic or refer the matter for action on the agenda for another meeting. Persons addressing the Council are requested to limit their presentations to three minutes and to avoid repetitious comments.*

**NEW BUSINESS:**

**Motion – Adopt Special Ordinance 2008-1285, authorizing the Mayor and City Clerk to sign an Intergovernmental Agreement with Coles Together relating to the FutureGen Project. (Cline)**

**Motion – Adopt Special Ordinance 2008-1286, authorizing the Mayor and City Clerk to sign a Letter of Credit and associated documents with First Mid-Illinois Bank & Trust, N.A. for the FutureGen Project. (Schilling)**

**Adjourn**

# **NEW BUSINESS:**

## **CITY OF MATTOON, ILLINOIS**

### **SPECIAL ORDINANCE NO. 2008 - 1285**

#### **A SPECIAL ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH COLES TOGETHER RELATING TO THE FUTUREGEN PROJECT**

**WHEREAS**, for over two and one-half years Coles Together and the City of Mattoon have been working on the FutureGen project; and,

**WHEREAS**, On December 18, 2007 Mattoon was selected by the FutureGen Industrial Alliance, Inc., a Delaware 501(c)(3) non-profit corporation, (hereinafter FutureGen) as the site for the construction of the world's first near-zero emissions coal fired power plant; and,

**WHEREAS**, as part of the selection process Coles Together, as the site proponent, made an offer of certain financial incentives with relation to the purchase of the plant site; and,

**WHEREAS**, one of those financial incentives was a grant in the amount of Three Million and no/100 Dollars (\$3,000,000) intended for the purchase of the property for the plant site; and,

**WHEREAS**, the City of Mattoon and Coles Together have been working closely in order to provide a comprehensive plan for providing the incentives offered; and,

**WHEREAS**, Coles Together has received pledges equal to the grant amount; and,

**WHEREAS**, at this time, Coles Together has not collected the amounts pledged; and,

**WHEREAS**, Coles Together intends to enter into a Site Acquisition Agreement with FutureGen that calls for Coles Together to provide FutureGen with Three Million and no/100 Dollars cash or an irrevocable letter of credit in an amount equal to Three Million and no/100 Dollars; and,

**WHEREAS**, Coles Together does not currently possess the resources needed to pay this amount or to obtain the irrevocable letter of credit and has requested the assistance of the City of Mattoon; and,

**WHEREAS**, First Mid-Illinois Bank & Trust, N.A. is willing to issue the irrevocable letter of credit in the amount of Three Million and no/100 Dollars (\$3,000,000.00) to the FutureGen Industrial Alliance, Inc. on behalf of Coles Together.

**WHEREAS**, the City of Mattoon desires to ensure that this project moves forward in a timely manner, believes that this project is of the utmost importance to the citizens of Mattoon and knows that it is in the best interest of the citizens of Mattoon to provide assistance to Coles Together; and,

**WHEREAS**, the primary missions of the City of Mattoon are economic development and the creation of jobs for Mattoon and the surrounding areas; and

**WHEREAS**, FutureGen will be a project of historic proportions in terms of jobs and economic development for the City of Mattoon and all of Central Illinois; and,

**WHEREAS**, the Constitution of the State of Illinois, at Article VII, Section 10 and the Statutes of the State of Illinois allow for the City of Mattoon to provide this type and form of development assistance to individuals and organizations.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MATTOON, COLES COUNTY, A MUNICIPAL CORPORATION**, as follows:

**Section 1.** The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Special Ordinance.

**Section 2.** The Mayor and City Clerk are authorized and directed to sign the attached Intergovernmental Agreement with Coles Together.

**Section 3.** The Mayor and City Clerk are also authorized to do any act and sign any additional documents necessary to implement the intent of this Ordinance.

**Section 4.** This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_,  
adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by a roll call vote, as follows:

AYES (Names): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAYS (Names): \_\_\_\_\_

ABSENT (Names): \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
David W. Cline, Mayor  
City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

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Susan J. O'Brien, City Clerk

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J. Preston Owen, City Attorney

Recorded in the Municipality's Records on \_\_\_\_\_, 2008.

## **INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement (hereinafter "Agreement") is entered into this 12<sup>th</sup> day of August 2008, by and between City of Mattoon, Coles County, Illinois, an Illinois municipal corporation (hereinafter "MATTOON") and Coles Together, an Illinois 501(c)(6) not-for-profit corporation (hereinafter "COLES TOGETHER").

WHEREAS, for over two and one-half years COLES TOGETHER and MATTOON have been working on the FutureGen project; and,

WHEREAS, On December 18, 2007 Mattoon was selected by the FutureGen Industrial Alliance, Inc., a Delaware 501(c)(3) non-profit corporation, (hereinafter FUTUREGEN) as the site for the construction of the world's first near-zero emissions coal fired power plant; and,

WHEREAS, as part of the selection process COLES TOGETHER, as the site proponent, made an offer of certain financial incentives with relation to the purchase of the plant site; and,

WHEREAS, one of those financial incentives was a grant in the amount of Three Million and no/100 Dollars (\$3,000,000) intended for the purchase of the property for the plant site; and,

WHEREAS, MATTOON and COLES TOGETHER have been working closely in order to provide a comprehensive plan for providing the incentives offered; and,

WHEREAS, COLES TOGETHER has received pledges equal to the grant amount; and,

WHEREAS, at this time, COLES TOGETHER has not collected the amounts pledged; and,

WHEREAS, COLES TOGETHER intends to enter into a Site Acquisition Agreement with FUTUREGEN that calls for COLES TOGETHER to provide FUTUREGEN with Three Million and no/100 Dollars cash or an irrevocable letter of credit in an amount equal to Three Million and no/100 Dollars; and,

WHEREAS, COLES TOGETHER does not currently possess the resources needed to pay this amount or to obtain the irrevocable letter of credit and has requested the assistance of the City of Mattoon; and,

WHEREAS, MATTOON desires to ensure that this project moves forward in a timely manner, believes that this project is of the upmost importance to the citizens of Mattoon and knows that it is in the best interest of the citizens of Mattoon to provide assistance to COLES TOGETHER; and,

WHEREAS, the primary missions of the City of Mattoon are economic development and the creation of jobs for Mattoon and the surrounding areas; and

WHEREAS, FUTUREGEN will be a project of historic proportions in terms of jobs and economic development for the City of Mattoon and all of Central Illinois; and,

WHEREAS, the Constitution of the State of Illinois, at Article VII, Section 10 and the Statutes of the State of Illinois allow for MATTOON to provide this type and form of development assistance to individuals and organizations.

NOW THEREFORE it is agreed by and between the parties as followed:

1. Letter of Credit. In order to fulfill the commitment of COLES TOGETHER to FUTUREGEN, MATTOON shall execute the attached Irrevocable Letter of Credit attached hereto as Exhibit "A" and any other documents to effect the letter of credit or any underlying borrowing or obligation related thereto.

2. Assignment of Pledges. COLES TOGETHER shall transfer, convey and assign all monies it has received respecting FUTUREGEN pledges and shall further assign and transfer all pledges in its possession and all monies henceforth received from said FUTUREGEN pledges to MATTOON so as to secure MATTOON respecting its obligations regarding the irrevocable letter of credit set forth above.

3. Assignment of Rights. COLES TOGETHER transfers and assigns all rights it has in any receivable or contract right due it pursuant to the Site Acquisition Agreement by and between COLES TOGETHER and FUTUREGEN to secure MATTOON up to its outstanding obligation on the irrevocable letter of credit or any borrowing or obligation related thereto or arising therefrom.

4. Reimbursement. COLES TOGETHER hereby agrees to reimburse MATTOON for any amounts, and the interest costs associated with those amounts, drawn on the irrevocable letter of credit and not covered by the pledges assigned by this Agreement.

5. Costs and Fees. COLES TOGETHER shall reimburse MATTOON for all fees and costs associated with this Agreement and the undertakings contemplated herein.

6. Indemnification. COLES TOGETHER agrees to indemnify and hold MATTOON harmless for any and all costs, damages and for what ever reason arising out of this Agreement, the irrevocable letter of credit or any borrowing related thereto.

7. Termination. This Agreement may be terminated by a duly executed written agreement signed by both parties or by the default provisions as set forth below. This Agreement shall automatically terminate if the irrevocable letter of credit and the associated borrowings and obligations are fully satisfied.

8. Default. Any failure of either party to perform any material obligation under this Agreement shall be considered a breach of this Agreement and the non-performing party shall be in default. Upon occurrence of the default the non-defaulting party shall give the defaulting party a written notice of default and demand for cure. The defaulting party shall have ten (10) days from the delivery of the notice to cure the default. If after ten (10) day the defaulting party has not cured the default, the non-defaulting party may terminate this Agreement and pursue any other legal remedies available to it. Neither party shall be liable to the other for any special,

indirect, consequential or other non-direct damages or remedies.

9. Notices and Communications. All notices, demands, requests for reimbursement or other communication under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by first class mail, postage prepaid or (ii) delivered, in each case, to MATTOON and COLES TOGETHER at their respective address (or at such other address as each may designate by notice to the other) as follows:

If to COLES TOGETHER:

Coles Together  
Attn: Ms. Angela Griffin  
400 Airport Road  
Mattoon, IL 61938

If to MATTOON:

City of Mattoon  
Attn: Mr. Alan Gilmore  
208 North 19<sup>th</sup> Street  
Mattoon, IL 61938

10. Illinois Law. This Agreement shall be deemed to be an intergovernmental agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

11. Waiver. Failure to enforce any right or obligation by either Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by either Party hereto of its rights with respect to any matter arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any other matter.

12. Written Modification. Neither this Agreement nor any provision hereof may be changed, revised, modified, waived, discharged, terminated or otherwise abrogated, diminished or impaired other than by an instrument in writing duly authorized and executed by both MATTOON and COLES TOGETHER.

13. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

14. Effective Date & Term. This Agreement shall become effective upon its execution and delivery by both MATTOON and COLES TOGETHER and shall remain in full force and effect thereafter until terminated in accordance with Section X.

15. Section Titles. The headings herein are inserted as a matter of convenience only, and

do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

16. Further Assurances. Each Party shall, without further consideration, execute and deliver to the other party such other documents and agreements, and take such other actions, as either Party may reasonably request to carry out and effect the purposes of this Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement of MATTOON and COLES TOGETHER. COLES TOGETHER represents, warrants, covenants and agrees that no representation, warranty, covenant or agreement shall be binding on MATTOON unless expressed in writing herein or by written modification pursuant to Section 12.

18. Severability. If any term, provision or clause of this Agreement or any application hereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall be not affected thereby.

IN WITNESS WHEREOF, the City of Mattoon and Coles Together have each caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date first set forth above.

CITY OF MATTOON, ILLINOIS

BY: \_\_\_\_\_  
David W. Cline, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Susan J. O'Brien, City Clerk

\_\_\_\_\_  
J. Preston Owen, City Attorney

COLES TOGETHER

BY: \_\_\_\_\_  
Angela Griffin, Its President



**CITY OF MATTOON, ILLINOIS**

**SPECIAL ORDINANCE NO. 2008 - 1286**

**A SPECIAL ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO SIGN A LETTER OF CREDIT AND ASSOCIATED DOCUMENTS WITH FIRST MID-ILLINOIS BANK & TRUST, N.A. FOR THE FUTUREGEN PROJECT**

**WHEREAS**, On December 18, 2007 Mattoon was selected by the FutureGen Industrial Alliance, Inc., a Delaware 501(c)(3) non-profit corporation, as the site for the construction of the world's first near-zero emissions coal fired power plant; and,

**WHEREAS**, Coles Together made certain incentive offers to the FutureGen Industrial Alliance to induce them to chose Mattoon as the site for this project; and,

**WHEREAS**, by Special Ordinance 2008-1285, the City of Mattoon has approved an Intergovernmental Agreement with Coles Together containing the terms and conditions pertaining to the procurement by the City of Mattoon of an irrevocable letter of credit to satisfy one of those incentive offers; and,

**WHEREAS**, City of Mattoon desires to ensure that this project moves forward in a timely manner, believes that this project is of the upmost importance to the citizens of Mattoon and knows that it is in the best interest of the citizens of Mattoon to provide assistance to Coles Together; and,

**WHEREAS**, the primary missions of the City of Mattoon are economic development and the creation of jobs for Mattoon and the surrounding areas; and

**WHEREAS**, the FutureGen project will be of historic proportions in terms of jobs and economic development for the City of Mattoon and all of Central Illinois; and,

**WHEREAS**, the Constitution of the State of Illinois, at Article VII, Section 10 and the Statutes of the State of Illinois allow for the City of Mattoon to provide this type and form of development assistance to individuals and organizations.

**WHEREAS**, the Illinois Statutes, at 65 ILCS 5/8-1-3.1, allow the City of Mattoon to execute the type of obligation provided for in this Special Ordinance.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MATTOON, COLES COUNTY, A MUNICIPAL CORPORATION**, as follows:

**Section 1.** The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Special Ordinance.

**Section 2.** The Mayor and City Clerk are authorized and directed to sign the attached documents, attached hereto as Exhibit "A" and incorporated herein by this reference, for the

issuance of an irrevocable letter of credit in the amount of Three Million and no/100 Dollars (\$3,000,000.00) by First Mid-Illinois Bank & Trust, N.A. to the FutureGen Industrial Alliance, Inc. on behalf of Coles Together.

**Section 3.** The Mayor and City Clerk are also authorized to do any act and sign any additional documents necessary to implement the intent of this Ordinance.

**Section 4.** This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_,  
adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by a roll call vote, as follows:

AYES (Names): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAYS (Names): \_\_\_\_\_

ABSENT (Names): \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
David W. Cline, Mayor  
City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Susan J. O'Brien, City Clerk

\_\_\_\_\_  
J. Preston Owen, City Attorney

Recorded in the Municipality's Records on \_\_\_\_\_, 2008.